

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

CAROLYN MOSS,

Case No. 22-11294

Plaintiff,

Hon.

v.

Wayne County Circuit
Court No. 22-003828-CD

DTE ENERGY COMPANY,

Defendants.

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PETITION FOR REMOVAL

NOW COMES Defendant DTE Energy Company (“DTE”), by and through their attorneys, Miller Canfield Paddock & Stone PLC, petitions for removal of this action from the Circuit Court for the County of Wayne, State of Michigan (Case No. 22-003828-CD) to the United States District Court for the Eastern District of

Michigan, Southern Division pursuant to 28 U.S.C. §§ 1331 and 1441, *et seq.* In support of this Petition for Removal, DTE state as follows:

1. Plaintiff, Carolyn Moss commenced an action against DTE in the Circuit Court for the County of Wayne, State of Michigan entitled *Carolyn Moss v. DTE Energy Company*, Case No. 22-003828-CD (the “Complaint”). A copy of the Complaint, including Summons and Jury Demand, is attached hereto as Exhibit 1.
2. On or about May 10, 2022, Plaintiff attempted to serve the Summons and Complaint on Defendant via hand-delivery to an individual within Defendant’s Payroll Office. Such service was ineffective, however, because payroll employees are neither officers of the Defendant, nor managing agents as required by Federal Rule of Civil Procedure (“Fed. R. Civ. P.”) 4(h)(1)(B) and Michigan Court Rule (“M.C.R.”) 2.105(D). Despite the insufficient service, Defendant is timely filing the instant Petition in accordance with 28 U.S.C. § 1446(b) and Fed. R. Civ. P. 6(a)(1)(c), *i.e.*, within 30 days of hand-delivery of the Complaint on May 10, 2022.
3. In her Complaint, Plaintiff alleges that “[i]n failing to pay [her] a wage equal to other similarly situated male employees, Defendant violated *Section 6 of the Fair Labor Standards Act* 29 U.S.C § 206(d), which makes it unlawful to pay employees of the opposite sex differently for the same work.” *See*, Ex. 1, ¶15.

Grounds for Removal

4. This Court has original jurisdiction pursuant to 28 U.S.C. § 1331 and removal is proper pursuant to 28 U.S.C. § 1441(a), which provides, in pertinent part, that:

[Any] civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant.... To the district court of the United States for the district and division embracing the place where such action is pending.

5. The United States District Court for the Eastern District of Michigan, Southern Division, has original jurisdiction because this is an action involving a federal question, *i.e.*, an action “arising under the Constitution, laws, or treaties of the United States” as provided under 28 U.S.C. § 1331.

6. Plaintiff expressly alleges violation of the Equal Pay Act under the Fair Labor Standards Act, 29 U.S.C. § 206 *et seq.* See, Ex. 1 ¶15.

7. This Court may also exercise jurisdiction over the state law claims outlined in Plaintiff’s Complaint in accordance with 28 U.S.C. § 1441(c)(1)(A-B), which in pertinent part states:

If a civil action includes a claim arising under the Constitution, laws, or treatises of the United States ... and a claim not within the original or supplemental jurisdiction of the district court ... the entire action may be removed...

Procedural Requirements for Removal

8. DTE has satisfied or will satisfy all procedural requirements for removal under 28 U.S.C. § 1446.

- a. In accordance with 28 U.S.C. § 1446(a), this is the appropriate Court for removal because the state court in which this action was commenced, the Circuit Court for the County of Wayne, is within this Court's district and division. Copies of all process and pleadings served upon DTE in this action, including the Summons and Complaint, are attached hereto as Exhibit 1. This Petition for Removal is signed pursuant to Fed. R. Civ. P. 11.
- b. In accordance with 28 U.S.C. § 1446(b)(1), this Petition for Removal is timely filed within 30 days of the receipt of the Summons and Complaint. DTE is the only defendant in this action. See, 28 U.S.C. § 1446(b)(2)(A).
- c. In accordance with 28 U.S.C. § 1446(d), DTE will promptly notify Plaintiff in writing that this case has been removed to this Court pursuant to this Petition for Removal. DTE will, on the day of filing of this Petition for Removal, send for filing a copy of the same with the court clerk of the Circuit Court for the County of Wayne.

9. The prerequisites for removal have been met. If any questions arise as to the propriety of the removal of this action, DTE respectfully requests the opportunity to present briefing, argument, and further evidence necessary to support their position that this case is removable.

10. In removing this action, DTE specifically reserves all defenses including without limitation, all defenses specified in Rule 12(b) of the Federal Rules of Civil Procedure.

WHEREFORE, Defendant DTE Energy Company hereby petitions to remove this case from the Circuit Court for the County of Wayne, State of Michigan to the United States District Court for the Eastern District of Michigan, Southern Division, and requests that all future proceedings be held in this Court.

Dated: June 10, 2022

Respectfully submitted,

/s/ Michelle P. Crockett

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Petition for Removal was served on June 10, 2022, by First Class U.S. Mail and e-mail, upon the following firm:

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